

§ 1720.5

7 CFR Ch. XVII (1–1–14 Edition)

guaranteed lender to enter into a guarantee agreement to evidence its acceptance of the foregoing. Any guarantee issued under this part shall be made in a separate and distinct offering.

[69 FR 63049, Oct. 29, 2004, as amended at 75 FR 42574, July 22, 2010]

§ 1720.5 Eligibility criteria.

(a) To be eligible to participate in the program, a guaranteed lender must be:

(1) A bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise organized on a non-profit basis; and

(2) Able to demonstrate to the Secretary that it possesses the appropriate expertise, experience, and qualifications to make loans for electrification or telephone purposes.

(b) To be eligible to receive a guarantee, a guaranteed lender's bond must meet the following criteria:

(1) The guaranteed lender must furnish the Secretary with a certified list of the principal balances of eligible loans then outstanding and certify that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, and any previously issued guaranteed bonds outstanding; and

(2) The guaranteed bonds to be issued by the guaranteed lender must receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee;

(c) A lending institution's status as an eligible applicant does not assure that the Secretary will issue the guarantee sought in the amount or under the terms requested, or otherwise preclude the Secretary from declining to issue a guarantee.

[69 FR 63049, Oct. 29, 2004, as amended at 75 FR 42574, July 22, 2010]

§ 1720.6 Application process.

(a) Applications shall contain the following:

(1) Background and contact information on the applicant;

(2) A term sheet summarizing the proposed terms and conditions of, and the security pledged to assure the ap-

plicant's performance under, the guarantee agreement;

(3) A statement by the applicant as to how it proposes to use the proceeds of the guaranteed bonds, and the financial benefit it anticipates deriving from participating in the program;

(4) A pro-forma cash flow projection or business plan for the next five years, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed bonds in accordance with their terms;

(5) Consolidated financial statements of the guaranteed lender for the previous three years that have been audited by an independent certified public accountant, including any associated notes, as well as any interim financial statements and associated notes for the current fiscal year;

(6) Evidence of having been assigned an investment grade rating on the debt obligations for which it is seeking the guarantee, without regard to the guarantee;

(7) Evidence of a credit rating, from a Rating Agency, on its senior secured debt or its corporate credit rating, as applicable, without regard to the government guarantee and satisfactory to the Secretary; and

(8) Such other application documents and submissions deemed necessary by the Secretary for the evaluation of applicants.

(b) The application process occurs as follows:

(1) The applicant submits an application to the Secretary;

(2) The application is screened by RUS pursuant to 7 CFR 1720.7(a) of this part, to ascertain its threshold eligibility for the program;

(3) RUS evaluates the application pursuant to the selection criteria set forth in 7 CFR 1720.7(b) of this part;

(4) If RUS provisionally approves the application, the applicant and RUS negotiate terms and conditions of the bond documents, and

(5) The applicant offers its guaranteed bonds, and the Secretary upon approval of the pricing, redemption provisions and other terms of the offering, executes the guarantee.

(c) If requested by the applicant at the time it files its application, the General Counsel of the Department of

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Agriculture shall provide the Secretary with an opinion regarding the validity and authority of a guarantee issued to the lender under section 313A of the RE Act.

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§ 1720.7 Application evaluation.

(a) *Eligibility screening.* Each application will be reviewed by the Secretary to determine whether it is eligible under 7 CFR 1720.5, the information required under 7 CFR 1720.6 is complete and the proposed guaranteed bond complies with applicable statutes and regulations. The Secretary can at any time reject an application that fails to meet these requirements.

(b) *Evaluation.* Pursuant to paragraph (a) of this section, applications will be subject to a substantive review, on a competitive basis, by the Secretary based upon the following evaluation factors, listed in order of importance:

(1) The extent to which the proposed provisions indicate the applicant will be able to repay the guaranteed bonds;

(2) The adequacy of the proposed provisions to protect the Federal government, based upon items including, but not limited to the nature of the pledged security, the priority of the lien position, if any, pledged by the applicant, and the provision for an orderly retirement of principal such as an amortizing bond structure or an internal sinking fund;

(3) The applicant's demonstrated performance of financially sound business practices as evidenced by reports of regulators, auditors and credit rating agencies;

(4) The extent to which the applicant is subject to supervision, examination, and safety and soundness regulation by an independent federal agency;

(5) The extent of concentration of financial risk that RUS may have resulting from previous guarantees made under section 313A of the RE Act; and

(6) The extent to which providing the guarantee to the applicant will help reduce the cost and/or increase the supply of credit to rural America, or generate other economic benefits, including the amount of fee income available to be deposited into the Rural Economic Development Subaccount, main-

tained under section 313(b)(2)(A) of the RE Act (7 U.S.C. 940c(b)(2)(A)), after payment of the subsidy amount.

(c) *Independent Assessment.* Before a guarantee decision is made by the Secretary, the Secretary shall request that the Federal Financing Bank review the adequacy of the determination by the Rating Agency, required under § 1720.5(b)(2) as to whether the bond or note to be issued would be below investment grade without the guarantee.

(d) *Decisions by the Secretary.* The Secretary shall approve or deny applications in a timely manner as such applications are received; provided, however, that in order to facilitate competitive evaluation of applications, the Secretary may from time to time defer a decision until more than one application is pending. The Secretary may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS shall notify the applicant in writing of the Secretary's approval or denial of an application. Approvals for guarantees shall be conditioned upon compliance with 7 CFR 1720.4 and 1720.6 of this part. The Secretary reserves the discretion to approve an application for an amount less than that requested.

[69 FR 63049, Oct. 29, 2004, as amended at 75 FR 42574, July 22, 2010]

§ 1720.8 Issuance of the guarantee.

(a) The following requirements must be met by the applicant prior to the endorsement of a guarantee by the Secretary.

(1) A guarantee agreement suitable in form and substance to the Secretary must be delivered.

(2) Bond documents must be executed by the applicant setting forth the legal provisions relating to the guaranteed bonds, including but not limited to payment dates, interest rates, redemption features, pledged security, additional borrowing terms including an explicit agreement to make payments even if loans made using the proceeds of such bond or note is not repaid to the lender, other financial covenants, and events of default and remedies;

(3) Prior to the issuance of the guarantee, the applicant must certify to